**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO. 797 OF 2006**
**IN**
**NOTICE OF MOTION NO. 3288 OF 2006**
**IN**
**SUIT NO. 2000 OF 2006**

Rizvi Land Developments Pvt. Ltd. ] .. Appellants (Ori.Plaintiffs)

Versus

M/s. Housing Development & Improvement India Pvt. Ltd. ] .. Respondents

Mr. Rajiv Narula i/b Mr. R.R. Kalekar and Mr. M.A. Khan for the appellants.

Mr. R.C. Shah i/b Mr. J.B. Patel for the respondents.

**CORAM: R.M. LODHA, &**
**J.H. BHATIA, JJ.**

**DATED: 10TH NOVEMBER, 2006**

**P.C. :**

. We heard the counsel for the appellants and the counsel for the respondents. We perused the impugned order. It is an admitted position that in Suit No.2000 of 2006, the ad-interim order of status quo was operative. From the order of 14th September, 2006 passed by the learned trial Judge it transpires that the counsel for the plaintiffs argued the matter for some time and then sought to withdraw the Suit unconditionally. The said prayer was accepted. On 3rd October, 2006, the Notice of Motion was taken out for

setting aside the order dated 14th September, 2006, whereby the Suit was allowed to be withdrawn unconditionally and pending the hearing of the Notice of Motion, prayer for injunction was made restraining the defendants, their servants or any other person acting on their behalf from carrying on construction on the subject property. The Notice of Motion is pending. However, by the impugned order dated 3rd October, 2006, the learned Motion Judge refused to grant ad-interim relief. Hence the Appeal by original plaintiffs.

2. During the course of Motion hearing in the Appeal, the counsel for the appellants placed before us the Affidavits of two Advocates Shri M.J. Shetty and Shri M.A. Khan, the Advocates on record for the plaintiffs. The said Affidavits were not filed before the learned Motion Judge. Upon perusal of the said Affidavits, we find that the two Advocates on record for the plaintiffs have stated that they did not instruct Shri K.P. Tiwari, counsel who argued the matter on 14th September, 200S before the learned trial Judge to withdraw the Suit. This statement in the Affidavits does not inspire confidence and appears to us to be not honest. The order dated 14th September, 2006 shows that Shri M.J. Shetty was present and Shri K.P. Tiwari was assisted by him. The Suit was withdrawn in his

presence.

3. Moreover, it transpires from the impugned order dated 14th September, 2006 that after arguing the matter for some time, the counsel stated before the Court that the plaintiffs would approach the authorities under the Slum Rehabilitation Act and, accordingly, sought for withdrawal of the Suit which permission was granted by the learned trial Judge.

4. Since Notice of Motion is pending, we do not intend to deal with the matter at great length, lest it must prejudice the consideration of the Notice of Motion on merits, however, suffice it to say that we find no error in the order of the learned Motion Judge in refusing to grant ad-interim relief.

. Appeal has no merit and is dismissed.

Sd/-
**[R.M. LODHA, J.]**

Sd/-
**[J.H. BHATIA, J.]**